



November 2011 Immigration Update

11.22.2011

11.23.2011

Human Resource (HR) Tip/Announcement. Author: William J. Benos

The H-1B Cap for this Year is About to be Reached - Employers Should Act Quickly to Secure a Slot. As of November 18, 2011, USCIS reported that 61,800 of the 65,000 available H-1B slots have been used. The H-1B slots for Master's cap have already been used. This leaves **3,200** available H-1B slots. At the rate of usage we have seen over the past few weeks, we anticipate that all H-1B slots will likely be used within the next several days. For employers who are contemplating hiring an H-1B professional at this time, this means that they should act quickly now. Not doing so will mean that new hiring in the H-1B category will be deferred to next year's allocation of visas, and, more importantly, that the start date for the employment of such new hires will, in most cases, be deferred to October 1, 2012. Note that this only applies to new H-1B hires, and not to H-1B transfers from one employer to another.

Additional Immigration Updates and Alerts. Author: D. Earl Baggett

USCIS Reverses Policy Regarding Mailing of Approval Notices. On or about December 1, 2011, USCIS will reverse its prior policy of sending approval notices to company petitioners. The prior policy that went into effect on September 12, 2011. During this interim period, USCIS has not been sending the original I-797A Approval Notice with attached I-94 card directly to the attorney of record after immigration filings. Instead, USCIS has been sending the approval notice and I-94 card directly to the company petitioner.

The I-797A Approval Notice with attached I-94 card are issued by USCIS after USCIS approves certain petitions and applications, including, but not limited to, initial H-1B petitions, H-1B extensions, H-1B Change of Employer petitions, H-4 applications and extensions, L-1/L-2 extensions, etc. The combined I-797A notice and I-94 card is the official approval notice that dictates the lawful period of stay for the beneficiary.

During this interim time period until USCIS returns to sending approval notices to attorneys of record, employers should consider using some of the strategies listed below:

- 1.

- Be on the lookout for mailings from USCIS. For large companies, it would be prudent to notify the mailroom to look for mail from USCIS. Mailroom personnel should be instructed to handle such documents with care and to promptly deliver such mail to the individual within the organization responsible for overseeing immigration filings.
2. Make a copy of the I-797A Approval Notice for the company's records, and scan and email a copy of the I-797A Approval Notice to the attorney of record responsible for filing the underlying petition.
 3. Provide the original I-797A Approval Notice with attached I-94 card to the foreign national employee, and inform the foreign national employee that the I-797A Approval Notice and the attached I-94 card dictate the period of lawful stay in the United States.
 4. Instruct the foreign national employee to make a copy of the I-797A Approval Notice and to file it with his or her important records, and that the I-797A Approval Notice and I-94 card should be kept with the foreign national employee's passport. Inform the foreign national employee that, if he or she moves, the foreign national is required by law to notify USCIS of the address change, and such notification should occur within ten days of the move.
 5. Remind the foreign national employee that the I-797A Approval Notice and I-94 card, by themselves, do not allow the employee to reenter the United States after traveling abroad. In order to reenter the United States after traveling abroad, the foreign national employee will need a valid visa in his or her passport. The I-797A Approval Notice will be required as part of the visa renewal process, and visas can only be obtained at a U.S. Embassy or consulate abroad.
 6. Create a tickler system and log the expiration date of the employee's nonimmigrant status. Contact immigration counsel at least six months in advance of the expiration of the employee's nonimmigrant status so that plans can be made to extend the employee's status.

For more information about this topic, please contact the authors or any member of the Williams Mullen Immigration Team.

Please note:

This newsletter contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel. For more information, please visit our website at www.williamsmullen.com or contact William J. Benos, 804.420.6402 or bbenos@williamsmullen.com. For mailing list inquiries or to be removed from this mailing list, please contact Julie Layne at jlayne@williamsmullen.com or 804.420.6311.

Related People

- D. Earl Baggett ? 804.420.6478 ? ebaggett@williamsmullen.com
- William J. Benos ? 804.420.6402 ? bbenos@williamsmullen.com

Related Services

- Immigration